

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3936 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHASKHLAL BHUDARLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN I MEHTA for Petitioners
MR N N PANDYA for Respondent No.1
MR SK JHAVERI for Respondent No. 2 & 4
None present for Respondent No.3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/96

ORAL JUDGEMENT

Heard learned counsel for the parties. The petitioners (in all 11) filed this Special Civil Application and prayed that the respondents-authorities be directed to issue orders of appointment and/or promotion of the petitioners to the post of Assistant

Deputy Educational Inspectors (A.D.E.I.) or Educational Inspectors (E.I.) with effect from the date of select list. The applications were invited by the District Panchayat Education Committee, Banaskantha, for the post of A.D.E.I.s/E.I.s, vide advertisement dated 30th July, 1979, published in newspaper "Sandesh". In response to the said advertisement, all the petitioners have applied for the said post. The petitioners were called for interview by the selection committee. These posts were to be filled by promotion and/or direct recruitment and the said committee interviewed the candidates for direct recruitment and promotion. Two select lists were prepared by the committee for the appointment to the aforesaid post. The names of the petitioners No.1 to 6 were placed in the select list prepared for appointment by promotion and the remaining petitioners were placed in the select list prepared for appointment by direct recruitment to the said post. The select list prepared by the selection committee was not acted upon by the concerned respondents and the reason was very obvious. The respondent - District Development Officer, under his order dated 17.1.80, annexed to this writ petition as annexure - 4, cancelled both the aforesaid lists. The District Development Officer, Banaskantha, has also given out reasons for cancellation of the select lists in his above referred order. He had stated in the said order that he received representations from the Head Masters of the primary schools who had appeared before the committee for interview contending therein that the interview was not conducted properly and further that the committee has shown favouritism by putting certain interested persons on the select lists and recommending them for appointment to the post etc. The concerned officer prima-facie found substance in the representations. Another reason has been given is that as per Rule 2(f) of the Recruitment Rules for appointment of the posts in question from promotion quota, accompanying Government circular dated 15.3.66, during the interview, candidate's knowledge of school, subjects and teaching methods etc. is to be tested and separate marks are to be given, but in the present case, consolidated marks are given. This procedure adopted by the selection committee was considered to be defeating the real object of the interview. It is a settled law that mere inclusion of name of a candidate in the select list does not give him indefeasible right to be appointed. This right can be denied legitimately. Exactly what the petitioners are claiming in the present case. They are seeking writ of Mandamus on the ground that their names had been included in the select list and the vacancies are available. It is also a settled law that even when vacancies are

available and number of candidates have also found their names on the select list, then those successful candidates cannot pray for writ of Mandamus as this right can be legitimately denied. In such cases, the respondents have to satisfy to this Court that the select list has been cancelled on legitimate grounds. A reference in this respect may have to be made to the decision of the Apex Court in the following cases.

- Shankarandas v. Union of India, 1991 (III) SCC, 47.
- Neelima Shangla v. State of Haryana, 1986 (IV) SCC, 268.
- Jitendra Kumar v. State of Punjab, 1985 (I), SCR, 899.
- Union of India v. S.S. Uppal, JT 1996(I), SCC, 258.
- State of Bihar v. Mohammad Kalauddin, JT 1996 (I), SCC, 271.

And the decisions of this Court, namely:

- Retd. Jahabhai Rathod v. State of Gujarat, 1995(I) GLR, 427.
- N.S. Mishra v. A.M.C., 1991(I) GLR 483.
- Commissioner of Police v. Santosh Basant Mali, 1995(II) GLR, 164 JT.

2. After going through the reasons which have been given for the cancellation of select list, it cannot be said that the respondents concerned have acted arbitrarily. In the result, this Special Civil Application fails and the same is dismissed. Rule is discharged. Ad-interim relief granted by this Court and as modified by this Court on 2.7.90, stands vacated.

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(sunil)